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17 **UNITED STATES DISTRICT COURT**

18 **NORTHERN DISTRICT OF CALIFORNIA**

19 **SAN FRANCISCO DIVISION**

20 **IN RE GOOGLE PLAY STORE
ANTITRUST LITIGATION**

21 THIS DOCUMENT RELATES TO:

22 *Epic Games Inc. v. Google LLC et al.*,
Case No. 3:20-cv-05671-JD

23 Case No. 3:21-md-02981-JD

24 **GOOGLE'S AMENDED
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL TRIAL EXHIBITS**

25 Judge: Hon. James Donato

1 As conveyed at the end of today's trial proceedings, Google and Epic are continuing to
 2 meet and confer in an effort to resolve Google's sealing request as to Exhibits 1489 and 1492,
 3 which we raised with the Court on November 13 at MDL ECF No. 786.¹ We understand that
 4 these two exhibits may be used in Court on November 16. In the event that the parties are unable
 5 to resolve this sealing issue through the meet and confer process, Google submits this Amended
 6 Administrative Motion to File Under Seal Trial Exhibits.

7 This filing addresses two of Plaintiffs' Proposed Trial Exhibits ("Exhibits") concerning
 8 Google's Search-related agreements with Non-Party Apple, Inc. ("Apple"). Google previously
 9 moved to seal these documents (MDL ECF No. 786), and submits this amended motion to
 10 address the narrowing of its sealing requests for Exhibit 1489 and provide further information
 11 regarding its request to seal Exhibits 1489 and 1492. As noted, Google and Epic continue to
 12 negotiate Epic's use of Exhibits 1489 and 1492 in open court on November 16 to address
 13 Google's sealing concerns.

14 As counsel for Google stated during trial proceedings on November 14, Google's Search-
 15 related agreements² with Apple are central to the Search case pending before Judge Mehta in the
 16 U.S. District Court for the District of Columbia and the specific terms of these agreements are
 17 unrelated to the challenged conduct in this case. To that end, Google draws the Court's attention
 18 to the rulings on the confidential treatment of these agreements and discussion about their
 19 underlying terms in the Search case yesterday, November 14, 2023, regarding the sealing of
 20 Exhibits 1489 and 1492. Specifically, in the Search case, Judge Mehta ruled on pending requests
 21 to seal certain terms of the JCA (Exhibit 1489) and the ISA (Exhibit 1492), both of which are
 22 subject to the same limited sealing requests in Google's Original Motion. Consistent with his
 23 prior treatment of these agreements, Judge Mehta permitted the sealing of certain non-public and
 24

25 ¹ On November 13, 2023, Google filed an Administrative Motion to File Under Seal Trial
 26 Exhibits (MDL ECF No. 786) ("Original Motion"). The Original Motion is still the operative
 27 motion with respect to Exhibits 1493, 6190, and 1496.

28 ² Google's and Apple's Joint Cooperation Agreement (JCA) dated May 15, 2014 (Exhibit 1489)
 and Information Services Agreement (ISA) dated September 30, 2016 (Exhibit 1492).

1 highly commercially sensitive terms in both agreements, which Google has revised its Original
 2 Motion to reflect, as follows:

3 ***Exhibit 1489 (JX0024 in Search).*** On November 14, 2023, Judge Mehta ordered that the
 4 portions of Section 1.4 relating to the percentage decline and the year term remain under seal.
 5 Trial Tr. at 10215:1-24. Judge Mehta denied Google's request to seal certain portions of Sections
 6 1.3 and 1.4 and Google thus withdraws its requests to seal those same portions of Sections 1.3
 7 and 1.4 in Exhibit 1489, as reflected in the updated, highlighted copy lodged with the Court with
 8 this filing. The remainder of the highlighted terms and conditions in Exhibit 1489 were not in
 9 dispute and remain under seal in Search, and Google respectfully requests the same treatment of
 10 this agreement here for the reasons set forth in the Declaration of Elizabeth Daly filed on
 11 November 13, 2013 (MDL ECF No. 786-1) ("Daly Declaration").

12 ***Exhibit 1492 (JX0033 in Search).*** On November 14, 2023, Judge Mehta also ruled that
 13 the second and fourth paragraphs of Section 4 of the ISA should remain under seal. Trial Tr. at
 14 10217:14-10219:1. Specifically, Judge Mehta reasoned that the information in the second
 15 paragraph of Section 4 had not been disclosed publicly, that revealing the provision would
 16 potentially prejudice Google and Apple, and that it did not have "great probative value." Trial Tr.
 17 at 10217:17-10218:8. Judge Mehta reached the same conclusion regarding the definition in the
 18 fourth paragraph of Section 4, reasoning that the definition was not public and the prejudice of
 19 revealing the "actual precise terms" warranted confidential treatment. Trial Tr. at 10218:11-
 20 10219:1. The remainder of the highlighted terms and conditions in Exhibit 1492 were not in
 21 dispute and remain under seal in Search, and Google respectfully requests the same treatment of
 22 this agreement here for the reasons set forth in the Daly Declaration.

23 Google remains committed to conferring with Epic regarding the use of these two
 24 exhibits in open court on November 16 and hopes to reach an agreement that would obviate the
 25 need for a sealing decision regarding these exhibits. The parties are otherwise at an impasse with
 26 respect to the Exhibits 1493, 1496, and 6190 addressed in the Original Motion.

27

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1 Dated: November 15, 2023

Respectfully submitted,
By: Rishi P. Satia

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